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Policy for Competition of Assistance Agreements

1. PURPOSE

This Order establishes Environmental Protection Agency (EPA) policy and requirements for the competition of assistance agreements (grants, cooperative agreements, and fellowships).

2. AUTHORITY

The authority for this Order is the Federal Grant and Cooperative Agreement Act of 1977, as amended, 31 U.S.C. 6301(3).

3. EFFECTIVE DATE

The requirements of this Order apply to: (1) competitive announcements issued, released, or posted after January 14, 2005, (2) assistance agreement competitions, awards, and disputes based on competitive announcements issued, released, or posted after January 14, 2005, (3) non-competitive awards resulting from non-competitive funding recommendations submitted to a Grants Management Office after January 14, 2005, and (4) assistance agreement amendments issued after January 14, 2005.

4. POLICY

It is EPA policy to promote competition to the maximum extent practicable in the award of assistance agreements. When assistance agreements are awarded competitively, EPA policy requires that the competitive process be fair and impartial, that all applicants be evaluated only on the criteria stated in the announcement, and that no applicant receive an unfair competitive advantage.

5. DEFINITIONS

For purposes of this Order:

- a. The term “announcement” or “competitive announcement” means all paper or electronic issuances that EPA Headquarters and Regional Program Offices (“Program Offices”) use to announce and solicit proposals/applications for competitive funding opportunities for the award of assistance agreements. Types of announcements that may be used include but are not limited to Requests For

Applications, Requests For Proposals, and Requests For Initial Proposals.

- b. The term “exception” from competition refers to the criteria contained in Section 12.a of this Order under which an assistance agreement that is subject to the requirements of this Order may be awarded on a non-competitive basis.
- c. The term “exemption” from competition refers to those programs identified in Section 6.c that are not subject to the requirements of this Order.
- d. The term “Grants Competition Advocate (GCA)” means the official responsible for administering and overseeing implementation of, and compliance with, the requirements of this Order (See Section 18).
- e. The term “ Grants Competition Disputes Decision Official (GCDDO)” means an individual(s), who was not involved in the assistance agreement competition and is from outside of the Program Office conducting the competition, designated to resolve assistance agreement competition-related disputes (See Section 16 and Appendix A). In addition, the GCDDO must not have any conflicts of interest with respect to the applicant filing a dispute or any applicant selected for award. For assistance agreement competition-related disputes where the headquarters Grants Administration Division (GAD) is the awarding office, and for disputes relating to national competitions where award selections are made by a headquarters office but the award is made by a regional office, the Office of Grants and Debarment (OGD) Director designates the GCDDO. For assistance agreement competition-related disputes where a regional office is the awarding office and the award selection is made by the regional office, the regional award official designates the individual to be the GCDDO.
- f. The term “Grants Management Offices (GMO)” refers to the headquarters and regional offices responsible for the business management aspects associated with the review and negotiation of applications and the award of assistance agreements. In the regions, GMOs report organizationally to the Assistant Regional Administrator; in headquarters, the GMOs report to the Director of the GAD.
- g. The term “Lead Agency Official” means the Assistant Administrator, Regional Administrator, or for purposes of the Office of the Administrator, the Deputy Chief of Staff or equivalent official, responsible for an assistance agreement or program.
- h. The term “open competition” means a competition that is open to all potentially eligible applicants identified under the Catalog of Federal Domestic Assistance (CFDA) program description number that applies to the announcement and competition. Open competition is EPA’s preferred method of competition for all assistance agreements and is required (unless an exemption under Section 6.c or

exception under Section 12.a applies) when the estimated total amount of funding expected to be awarded under an announcement exceeds \$100,000 (See Section 7).

- i. The terms “Requests For Applications (RFA)” or “Requests For Proposals (RFP)” generally means an announcement that informs the public or appropriate eligible applicants of an assistance agreement competition and invites the submission of detailed applications/proposals that are reviewed and evaluated and upon which selection decisions are made.
- j. The term “Requests For Initial Proposals (RFIP)” generally means an announcement that informs the public or appropriate eligible applicants of an assistance agreement competition typically consisting of: (1) the submission of initial applications/proposals that are reviewed and evaluated and results in the determination by the Agency of which initial applications/proposals merit further consideration; (2) the submission of final applications/proposals by the applicants whose initial applications/proposals merited further consideration; (3) the review and evaluation of the final applications/proposals; and (4) the selection of applicants to receive awards after the review and evaluation of the final applications/proposals.
- k. The term “simplified competition” means a competition among a number of the potentially eligible applicants identified under the CFDA program description number that applies to the announcement and competition. Simplified competition may be permitted when the estimated total amount of funding expected to be awarded under an announcement does not exceed \$100,000, which is the “simplified competition threshold” (See Section 7).

6. APPLICABILITY

- a. Except as provided in paragraph c. below, the requirements of this Order apply to the award of all EPA assistance agreements.
- b. Competition of assistance agreements under programs that have statutory and/or regulatory competition requirements:
 - (1) Some environmental program assistance agreements are awarded through competitive processes required by statute and/or regulation including but not limited to Technical Assistance Grants under 40 CFR Part 35, Subpart M, Brownfields grants awarded as required by section 104(k)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and other assistance agreements awarded pursuant to regulatory competition requirements under 40 CFR Part 35. These assistance agreements,

and amendments to them, must be competed in accordance with the statutory and/or regulatory requirements that apply to them including the use of any statutory and/or regulatory required evaluation, ranking, or eligibility factors (e.g., all initial CERCLA 104(k) Brownfields grants must be competed regardless of amount).

(2) Unless prohibited by, or inconsistent with, the statutory and/or regulatory requirements that apply to them, these assistance agreements must also be competed in compliance with the requirements of this Order and any guidance issued by the GCA.

c. Exemptions from the competition requirements of this Order:

The requirements of this Order do not apply to:

- (1) Assistance agreement awards to States, interstate, and local agencies and, if applicable, Tribes, Intertribal consortia, and other eligible recipients, under the following programs: those programs covered by 40 CFR Part 35 that are not subject to statutory/regulatory competition requirements (e.g., direct assistance awards from the State Revolving Funds for the District of Columbia, the Territories, and Puerto Rico); Wastewater Operator Training grants under section 104(g)(1) of the Clean Water Act; Chesapeake Bay Agreement management mechanism implementation and ecosystem monitoring grants under section 117(e), and BEACH grants under Section 406, of the Clean Water Act; Expense Reimbursement grants under Section 300g-8 (d) of the Safe Drinking Water Act; Leaking Underground Storage Tank Trust Fund Cooperative Agreements; Oil Spill Trust Fund grants; Grants for PM2.5 Monitoring Network activities, National Air Toxics Monitoring Pilots, and Regional Haze Programs under Clean Air Act Section 103; Interstate Commission grants under Section 106 of the Clean Air Act; and State and Tribal response program grants under Section 128(a) of CERCLA.
- (2) Other programs available by statute, appropriation act, or regulation only to Indian Tribes and Intertribal Consortia.
- (3) Assistance agreements required by law, Executive Order, or international agreement (an agreement between two or more nations) to be made to an identified recipient(s), and Congressional earmarks to an identified recipient(s) awarded in response to an action from Congress or a Congressional Committee as reflected in

appropriation or authorizing legislation or applicable legislative history (e.g., conference reports).

- (4) Senior Environmental Employment Program Cooperative Agreements.
 - (5) Assistance agreement awards to Foreign Governments (and instrumentalities and agencies of the foreign government as determined by the law of that country) and to United Nations agencies and similar International Organizations, such as the Organization of American States and the Organization for Economic Cooperation and Development (OECD), for international environmental activities. An international organization must be comprised predominantly of representatives of governmental or quasi-governmental organizations from two or more nations, or have a relationship with the U.S. Government established by treaty or other international agreement recognized as valid by the U.S. State Department. Awards to non-governmental international organizations are not covered by this exemption.
 - (6) Other programs not identified above, if approved by the Assistant Administrator for the Office of Administration and Resources Management (OARM). The Lead Agency Official must submit a written request for an exemption from the competition requirements of this Order to the GCA who will forward a recommended decision to the Assistant Administrator for OARM. The request must demonstrate that urgent and compelling circumstances, national security considerations, or public interest reasons justify an exemption from the competition requirements of this Order, and indicate the period of time to be covered by the exemption request. Exemption requests approved by the Assistant Administrator for OARM will be in writing and be posted by the GCA on the grants competition intranet web site for as long as the exemption remains in effect. Program Offices that receive an exemption from competition under this paragraph should develop a separate CFDA program description for the exempt program.
- d. Program Offices may, if practicable, conduct competitions for awards under the programs exempt from this Order by paragraph c above. If a Program Office conducts a competition for awards under a program that is exempt from competition by paragraph c, to the extent not otherwise prohibited by, or inconsistent with, law, regulation, or policy, they must do so in compliance with this Order and any guidance issued by the GCA.

7. **COMPETITION REQUIREMENTS**

a. Competition Methods:

EPA policy requires, with certain limited exceptions stated in Section 12, that Program Offices promote and provide for competition in awarding assistance agreements subject to this Order to the maximum extent practicable. The competitive procedures available for use in fulfilling this requirement are open competition and simplified competition.

b. Open competition:

When the estimated total amount of funds expected to be awarded under an announcement exceeds \$100,000 (regardless of the amount of any individual awards), open competition among all potentially eligible applicants is required. When the estimated total amount of funds expected to be awarded under an announcement does not exceed \$100,000 (regardless of the amount of any individual awards), open competition is preferred but simplified competition is permitted as described below.

c. Simplified competition:

The purpose of allowing simplified competitions for announcements under which the total estimated amount of funds expected to be awarded does not exceed \$100,000 is to reduce administrative costs, promote efficiency in assistance agreement competitions, and minimize burdens for Program Offices and applicants in conducting and competing for assistance agreements where a limited amount of funding is available. Simplified competition may only be used under the following circumstances and conditions:

(1) When the estimated total amount of funding expected to be awarded under the announcement does not exceed \$100,000. For example, simplified competition may be used when four \$25,000 awards will be made under an announcement because the total of all awards does not exceed \$100,000. Conversely, simplified competition cannot be used when three \$40,000 awards are expected under an announcement because the total of all awards exceeds \$100,000.

(2) When the CFDA program description number that applies to the simplified competition indicates that for certain competitive funding opportunities the Agency may limit eligibility to compete to a number or subset of eligible applicants consistent with the Agency's assistance agreement competition policy.

(3) Agreements, projects, activities, or announcements valued at or aggregating more than \$100,000 shall not be divided into several agreements, projects, activities, or announcements that are less than the Simplified Competition Threshold in order to use simplified competition procedures. For example, a series of simplified competitions to carry out the same or similar project, activity, and purpose is prohibited.

(4) Simplified competitions must be conducted through issuance of an announcement prepared in the OMB required format described in Section 8. If one award is expected under the announcement, the announcement must be issued to at least three eligible organizations. If multiple awards are expected under the announcement, the announcement must be issued to at least twice as many eligible organizations as are expected to receive awards (e.g., if two awards are expected, the announcement must be issued to at least 4 organizations). In addition, if organizations other than those receiving the announcement for the simplified competition timely express interest in receiving an announcement and competing for an award, Program Offices must allow them to participate in the competition. Program Offices conducting multiple simplified competitions must vary the field of competition for each simplified competition.

(5) To ensure that there is meaningful competition, Program Offices must solicit proposals/applications from eligible organizations that are fully capable and qualified to successfully perform the project. Program Offices may identify such organizations on the basis of prior history and experience with the applicant, history on prior competitions for the same or similar projects, or expressions of interest in performing the project by potentially eligible applicants. Program Offices must include documentation in the file explaining how they determined the field of competition for the simplified competition. If the requisite number of capable and qualified organizations to participate in a simplified competition cannot be identified, then Program Offices must use open competition.

(6) Program Offices may have announcements for simplified competitions synopsisized on <http://fedgrants.gov> (See Section 8). The GCA will notify Program Offices if this becomes a requirement. Program Offices must timely notify the GCA of their intent to conduct a simplified competition as well as the results of the competition (including the number and identity of the applicants and awardees, how the applicants were chosen to compete, and whether the awards involve geospatial information) so that the GCA can maintain information on simplified competitions and their effectiveness.

**8. PREPARATION AND CONTENT OF COMPETITIVE ANNOUNCEMENTS/
SYNOPSIS REQUIREMENTS**

- a. All open and simplified competitions must be conducted through issuance of an announcement prepared in accordance with the OMB required format which is included in the Federal Register notice that can be accessed as set forth in paragraph d. below. Announcements for open competitions will be posted and made available to all potential applicants on a publicly available Agency website (or otherwise made publicly available on the internet or through comparable means). Some programs, however, are required to post funding opportunity announcements in the Federal Register and Program Offices should consult with OGC/ORC to determine if Federal Register publication, rather than website publication, is required (See paragraph e. below). For simplified competitions, the announcement will be issued to the competing applicants.
- b. Program Offices may supplement Federal Register or web-site publication of an announcement through the following means:
 - (1) Publishing announcements in newsletters, trade journals, general circulation newspapers, or other written media, or by mass mailing.
 - (2) Providing announcements using electronic means, in addition to web sites, such as through list servers or facsimile mailing lists that are periodically updated. Updates should be made through a process that allows new potential applicants, upon request, to be added to the lists.
 - (3) Mailing copies of announcements to eligible organizations on EPA mailing lists that are periodically updated. Updates should be made through a process that allows new potential applicants, upon request, to be added to the lists.
 - (4) Using other methods that are reasonably calculated to ensure that all potentially eligible applicants will be notified.
- c. Synopsis of announcement:

Synopses of all announcements for open competitions, and all modifications/amendments to announcements for open competitions, must be posted on the fedgrants.gov internet site, <http://fedgrants.gov>. OMB's synopsis requirements are located at <http://www.whitehouse.gov/omb/fedreg/2004/031008.pdf>. The GCA's Office will post the synopsis for the announcement and any modifications to the announcement at the fedgrants.gov website. OMB requires that the synopsis be posted within three (3) business days after release of the announcement or modification. In order for the GCA's office to timely post the synopsis in

compliance with OMB's requirements, Program Offices must provide the GCA's office with the complete information needed to post the synopsis, including the URL link to the actual announcement and not the general Program Office webpage, no later than two (2) business days after release of the announcement. In addition, the GCA's office must be provided with notification of any modifications to the announcement no later than one (1) business day after the modification is issued so that it can be timely synopsized. After posting, Program Offices should view the synopsis of the announcement or modification at <http://fedgrants.gov> and notify the GCA's office if they notice any problems with it.

d. _____ Organization and content of announcements:

(1) Program Offices are responsible for preparing and organizing announcements for assistance agreement competitions in compliance with the OMB required format, the requirements of this Order and other relevant EPA policies (e.g., Environmental Results Under EPA Assistance Agreements; Assessing Capability of Non-Profit Applicants for Assistance Awards--Pre-award policy), and any implementing guidance issued by the GCA, and ensuring that the announcement contains all of the required and appropriate information. Program Offices need to ensure consistency among the provisions, instructions, and requirements stated in an announcement (e.g., ensuring that the information required to be submitted by applicants corresponds to the ranking factors as well as verifying that what is said in one section of the announcement is consistent with what is said in other sections).

(2) The OMB announcement format is included in the Federal Register notice that can be accessed electronically at http://www.whitehouse.gov/omb/fedreg/062303policy_directive.pdf. It requires that each announcement contain certain specified information in an Overview section which precedes the Full Text Announcement. The Full Text Announcement is divided into eight separately captioned sections, each of which specifies a mixture of required and optional information to be included in that section. The information to be included in each section is described in detail in the Federal Register notice, some of which is highlighted below:

(A) Section I, Funding Opportunity Description, contains the programmatic description of the funding opportunity, and should include clear examples of eligible activities and citations for the statutes and/or regulations authorizing the funding opportunity. This section must also include the information required by Section 6 of the Environmental Results policy.

(B) Section II, Award Information, should include a statement that EPA reserves the right to reject all proposals/applications and make no awards under the announcement (alternatively, this statement may appear in Section VIII). If a

Program Office wants to reserve the right to offer partial funding of a proposal/application, this section must include a statement to this effect and include the partial funding provisions (alternatively, the partial funding provisions may be included in Section V).

(C) Section III, Eligibility Information, identifies the applicants eligible to compete for awards under the announcement, and addresses considerations or factors that make an applicant or proposal/application eligible or ineligible for award consideration whether they are referred to as “responsiveness factors,” “go-no-go factors,” “threshold eligibility criteria,” or something similar. They may include legal, policy, relevance, programmatic, administrative, and/or financial criteria that have the effect of making an applicant, proposal/application, or project eligible or ineligible for award. Examples of threshold legal issues may include non-profit status and whether the project is within the statutory/regulatory authority for the assistance agreement; financial criteria may include funding limitations on the amount of the agreement; administrative criteria may include conformance to the announcement’s requirements and instructions (e.g., page limits). Threshold eligibility criteria are typically addressed before a proposal/application is evaluated against the criteria stated in Section V of announcements and are distinct from those criteria. This section must also clearly explain the consequences of failing to meet a threshold eligibility criteria.

For simplified competitions, Section III must indicate that the competition is among a number of applicants consistent with the simplified competition provisions of this Order and the applicable CFDA number.

This section should also make clear whether an applicant must be able to meet the eligibility criterion for award by the time of application/proposal submission or the time of award. It should indicate whether an applicant’s failure to meet the eligibility criterion by the time of submission will result in rejection of the application/proposal, or, even though the application/proposal may be reviewed, will preclude the agency from making an award.

(D) Section IV, Application and Submission Information, describes the required content and format of the application/proposal. It must also state any time and date deadlines, and explain what the deadline means (e.g., whether it is the date and time by which the Agency must receive the proposal/application, the date by which the proposal/application must be postmarked, or something else) and how the deadline depends, if at all, on the submission method used (e.g., mail, electronic, hand-delivery). This section must also explain the effect of missing the deadline and under what circumstances, if any, late proposals/applications will be considered. Any page limitations, and the consequences of exceeding the limitation, must also be expressed in this section (e.g., not considering pages in excess of the limitation). If exceeding a page limitation or otherwise not

complying with submission or administrative requirements or instructions will result in the ineligibility of the applicant this must also be stated in Section III.

In addition, this section must require applicants to include in their application/proposal information that addresses and corresponds to the ranking factors set forth in Section V of the announcement. Further, this section or Section VIII must include a statement notifying applicants to clearly mark proposal information that they consider confidential and that EPA will make confidentiality determinations in accordance with Agency regulations at 40 CFR Part 2, Subpart B. A statement requiring applicants to provide their DUNS number when applying for the assistance agreement may be included in this section, Section VIII of the announcement, or in the Grant Application kit.

If an RFIP is issued, Section IV or V of the announcement must include a statement that EPA will only ask applicants whose initial proposals were selected for further consideration to submit final proposals.

(E) Section V, Application Review Information, contains the ranking (evaluation) factors and any subfactors that will be used to evaluate proposals/applications and the relative importance assigned to them. These factors must be tailored to the nature of the projects being competed, represent key areas of importance and emphasis to be considered in the selection process, and support meaningful and fair comparisons of competing applicants. If factors or subfactors vary in importance, this section must state the relative weights, percentages or other means used to distinguish them (e.g., factors may be listed in descending order of importance). If the relative importance of the factors and subfactors are not identified, then they all will be deemed of equal value (e.g. if an announcement has 4 evaluation factors and no value is attributed to any of them, then each will be considered of equal value-25 points on a 100 point scale; if there are 3 subfactors identified under an evaluation factor that is worth 30 points and no value is assigned to any subfactor then each will be deemed worth 10 points).

This section must also (i) include any evaluation criteria required by law (e.g., CERCLA 104(k)(5)(C) for Brownfields grants), regulation, or Agency policy (e.g., environmental results, programmatic capability) to be used to evaluate proposals/applications, (ii) identify any program policy or other factors, other than the technical evaluation criteria, that may be considered in the award selection process (e.g., geographical diversity, programmatic priorities, program funding balance), and (iii) describe the process that will be used to select applicants for award.

(F) Section VI, Award Administration Information, must provide notice to applicants of the disputes procedures contained in Appendix A or any “substantially the same” disputes procedures approved by the GCA that will apply

to competition-related disputes (See Section 16). The dispute procedures must be included in full text, referenced, or incorporated in Section VI; if not included in full text, applicants must be advised on how to access or request a copy of the dispute procedures. This section must also include, if appropriate, the information required by Section 9.c of the Pre-award policy.

(G) Section VII, Agency Contacts, must provide applicants with a point of contact(s) for answering questions regarding the announcement.

(H) Section VIII, Other Information, may include any additional information that may be helpful to applicants.

e. Federal Register requirements:

Announcements that appear in the Federal Register must be prepared in the OMB required format. For announcements that appear in the Federal Register, the required overview information should appear with other information near the beginning of the notice due to the Federal Register's standard notice format. Program Offices must display the required overview information in a single location preceding the full text of the announcement, which would be in the supplementary information section of the Federal Register notice.

f. Announcements for all competitions other than simplified competitions must be open for at least 45 calendar days from the date they are posted on the Program Office website (or in the Federal Register) or otherwise released, absent GCA approval for a shorter time period. The GCA will grant approval for a period less than 45 calendar days only when there are compelling circumstances justifying the shorter period. For RFIPs, the 45 day time period applies to the submission of the initial application/proposal. For simplified competitions, announcements must remain open for at least 30 calendar days from the date the announcement is issued to applicants.

g. Modifying/Amending the announcement:

The nature of the modification/amendment to the announcement and its timing determines who should be notified of it and whether the due date for applications/proposals must be extended.

(1) Modifications issued before the established deadline for submission of applications/proposals shall be issued to all potentially eligible applicants in the same manner as the original announcement was publicized (e.g., Program Office website). If the modification substantively changes the requirements of the announcement, evaluation or selection criteria, threshold criteria, eligibility criteria, or impacts the content and preparation of applications/proposals or the

decision of a potential applicant to compete or not, then the due date for receipt of applications/proposals must be extended. If the modification merely makes minor or administrative changes to the announcement that do not substantially affect the competition, then the due date generally does not need to be extended.

(2) Modifications issued after the established deadline for receipt of applications/proposals shall generally be issued to all applicants that have not been eliminated from the competition. However, if the modification substantively changes the requirements of the announcement, evaluation or selection criteria, threshold criteria, eligibility criteria, or could have affected the decision of a potential applicant to compete or not, then the Program Office must reopen the competition, notify all applicants and potentially eligible applicants in the same manner as the original announcement was publicized, and extend the due date for application/proposal submission.

(3) Program Offices may authorize an application/proposal deadline extension when justified by appropriate circumstances. The Program Office must notify potential applicants of the extension in the same manner that it publicized the original announcement to assure that all potentially eligible applicants are notified.

h. National announcements/regional awards:

(1) Program Offices may issue national announcements where selections for award are made at a regional level. In such cases, the announcement must indicate any regional specific deadlines, information and contact points, describe the selection process to be used by the regional offices, and state whether, and in what manner, the regional offices may deviate from, or supplement, the national announcement procedures, requirements, and criteria. Program Offices that propose to limit eligibility for awards to only sources from within a particular geographical or regional area (e.g., a regional Program Office wants to limit awards only to sources from within that region) must consult with the GCA before doing so (See also Section 14).

(2) If regional offices supplement the national announcement to specify regional specific information or evaluation and selection criteria, then the national announcement must include such information or a link to it. Regional offices that want to use procedures or selection criteria fundamentally different from those in the national announcement must issue and synopsise a separate announcement.

i. Announcement review:

(1) When the estimated total amount of funding expected to be available for awards under an announcement is \$1,500,000 or more, the announcement must be

reviewed and concurred on by the GCA and OGC/ORC before it can be issued or posted. Announcements for headquarters Program Offices will be timely reviewed by the GCA and OGC; announcements for regional Program Offices will be timely reviewed by the GCA and the appropriate ORC. To facilitate the reviews, the Program Office will provide the announcement simultaneously to the GCA and OGC/ORC for review. The GCA, after consultation and coordination with Program Offices and OGC/ORC, will issue further guidance on review procedures and may in the future adjust the dollar threshold for announcement review if necessary to ensure the quality of announcements.

(2) On a case by case basis, Program Offices may ask the GCA and/or OGC/ORC to review any announcement that includes complex, controversial, or unique provisions and requirements.

(3) When developing announcements, Program Offices must raise any legal issues they are aware of regarding the statutory authority for the assistance agreement award, or compliance with the Federal Grant and Cooperative Agreement Act or applicable assistance agreement or ethics regulations, to OGC/ORC.

9. **REVIEW AND EVALUATION PROCEDURES**

- a. Announcements and assistance agreement competitions must provide for, in compliance with this Order and any guidance issued by the GCA, an objective and unbiased process for reviewing proposals/applications submitted in response to the announcement and selecting applicants for award. This requires a comprehensive, impartial, and objective examination of proposals/applications based on the criteria contained in the announcement by persons who do not have any conflicts of interest with respect to the competing proposals/applications or applicants (See Section 10) and who are knowledgeable in the field of endeavor for which awards are being competed. The file must include a statement from each reviewer documenting that they do not have any unresolved conflicts of interest with respect to any applicant or proposal/application (See also Section 10).
- b. At a minimum, the review, evaluation, and selection process must provide that:
 - (1) Funding recommendations and decisions may not be made on the basis of undisclosed threshold, evaluation, or selection criteria.
 - (2) Program Offices establish a panel or group of reviewers to evaluate proposals/applications; however, if only a small number of proposals/applications (six or less) are received, and based on the complexity and monetary value of the competition, a non-panel review is permitted. Even when six or fewer proposals/applications are received, it

will be appropriate to establish a review panel depending upon the amount of funding available under the announcement and the complexity of the projects being competed (e.g., the larger the amount of funding available and/or the more complex the projects, the more appropriate it is to use a review panel).

- (3) Reviewers must independently review proposals/applications in accordance with the criteria stated in the announcement.
- (4) The review and evaluation process result in the development of a list of qualified proposals/applications, a ranking/recommended list of proposals/applications, a list of applicants recommended for award, or something similar, by the review panel (or reviewer). The list will be provided to the Approval Official who selects the proposals/applications or final proposals (if an RFIP was issued) which will be funded. If the Approval Official disagrees with the recommendations or rankings of the review panel (or reviewer(s)) and/or selects a proposal/application out of rank or recommended order or a proposal/application that is not on a ranking, recommended, or qualified list, the Program Office must document the basis for that decision in the file. The Approval Official must not depart from the recommendations or rankings of the review panel (or reviewer(s)), or select a proposal/application out of rank order, on the basis of undisclosed evaluation or selection criteria, personal preference, or information that is not reasonably related to the evaluation and selection factors set forth in the announcement.
 - (A) For RFIPs, the evaluation panel (or reviewer(s)) reviews and selects initial proposals of applicants who will be invited to submit final proposals, and then reviews and ranks, lists, or recommends the final proposals for selection. An Approval Official must determine, from the final proposals, which to select for funding.
 - (B) For RFA's or RFP's, the evaluation panel (or reviewer(s)) reviews and ranks, lists, or recommends the submitted applications/proposals for selection. An Approval Official reviews the ranked or recommended list or list of qualified applications/proposals and determines which to select for funding.

c. Peer review of competitive proposals/applications:

Program Offices, if appropriate for a particular competition, are encouraged to use a peer review type process utilizing federal and/or non-federal experts from outside of the EPA, or individuals from different divisions within the Program Office or from other Program Offices, to help

evaluate proposals/applications for technical merit. The nature and extent of the peer review may depend upon the dollar amount of the assistance agreements to be awarded under the competition as well as the nature and complexity of the projects to be performed. Program Offices interested in using a peer review type process for the evaluation of proposals/applications should consult with the GCA regarding how to structure the process and how to identify and address conflict of interest issues that could arise in connection with the use of peer reviewers. Where non-EPA personnel participate in the review process, final decisions on the relevance of a proposal/application to program needs and the selection of recipients must be made by EPA personnel.

d. Evaluation methods:

Proposal/application evaluation is an assessment of the applicants ability to perform the proposed project successfully based on the criteria in the announcement. The evaluation methodology used for award selection purposes must ensure that all proposals/applications are fairly and objectively evaluated against the stated criteria. This will involve the use of a scoring method or combination of methods that assigns numerical weights or points, adjectival ratings (e.g., outstanding, good, acceptable), a low-medium-high rating system, or something similar, to the ranking factors, which may then be used to arrive at a total score, average score, or consensus score per applicant.

e. Evaluation documentation:

Each reviewer must adequately document their evaluation of an applicant for the evaluation factors and any subfactors that the applicants proposal/application is evaluated against in order to demonstrate the reasonableness of the score or rating that results from the evaluation. Reviewers must provide an explanation on the score sheet or other material used to document the evaluation explaining and justifying the score or rating they assign for the evaluation factors and any subfactors. For example, if a reviewer gives an applicant 20 points out of a possible 20 points for a particular factor, then the reviewer must explain the basis for this score. Similarly, if an applicant receives 0 of the possible points for a factor, the reviewer must explain why. Furthermore, review panels that develop consensus scores or ratings for applicants must prepare a consensus summary evaluation scoring or rating sheet that explains and justifies the consensus score or rating for each applicant for each evaluation factor/subfactor.

f. Selection documentation:

The EPA Approval Official for an assistance agreement award must ensure that documentation is prepared for the file (which will be included in, or attached to, the funding recommendation or Award Decision Memorandum-See Section 19.a) that demonstrates the basis and rationale for the selection of the applicant(s) for award. This requires providing, at a minimum, a summary of the competition, a discussion of how the applicant ranked in comparison to other applicants, and explaining why the applicant was selected for award based on the evaluation and selection factors in the announcement (e.g., demonstrating that the award selection recommendation or decision is based on an assessment of the applicant's proposal/application against the evaluation and selection factors in the announcement).

g. Evaluation preparation:

Prior to beginning the evaluation process, Program Offices must provide guidance to reviewers regarding their responsibilities and the evaluation and award processes to ensure consistency and fairness in the evaluation and selection process. This guidance should, as appropriate, include:

- (1) A copy of the announcement;
- (2) A summary of the evaluation and award selection process and a copy of the threshold eligibility factors and evaluation/selection factors;
- (3) Forms or a disk with the format for scoring or score sheet for the reviewers use in preparing their findings and documenting their scores; and
- (4) Guidance regarding the scoring process so that all reviewers are operating under a common framework and understanding regarding what a particular score, narrative or adjectival rating means. For example, when evaluation factors are point scored, there must be a description of what a particular score represents (e.g., a 10 means outstanding; a 7 means good; a 5 means adequate; a 0 means totally deficient and without any merit).

10. CONFLICTS OF INTEREST

- a. For purposes of this Order, the term “conflict of interest” with respect to applicants competing for an award generally refers to situations where because of other activities or relationships the applicant could have an unfair competitive advantage in competing for the award. With respect to individuals who serve as reviewers or who make competition or selection-related decisions, a “conflict of interest” generally refers to situations where because of other activities or relationships the individual may not be able to impartially and objectively perform their responsibilities.

- b. EPA personnel involved in the assistance agreement competition process must recognize the potential for actual and potential conflict of interest situations involving applicants competing for award (e.g., whether an applicant has an unfair competitive advantage in competing), reviewers, and others involved with the competition and selection process (e.g., Approval Officials who make selection decisions). Appropriate actions must be taken to prevent conflicts of interest from materializing, and for addressing (after consultation with the GCA and/or OGC/ORC attorneys) conflicts of interest if they do materialize. Program Offices must include documentation in the file reflecting that the individuals involved with the competition, evaluation (reviewers/evaluators), and selection processes do not have any unresolved conflicts of interest with respect to the competition or any applicants competing for award (See also Section 9.a regarding reviewer conflicts of interest).
- c. An individual cannot review or evaluate any proposals/applications submitted in response to an announcement if he/she has any direct personal, familial or financial relationship or connection with any of the proposals /applications being reviewed or any of the applicants. In addition, individuals who have other types of relationships (e.g., professional relationships, membership in the same organization) with the proposals/applications being reviewed or any of the applicants cannot review any proposals/applications submitted in response to an announcement if that relationship would impair or influence their objectivity or impartiality in reviewing proposals/applications and the conflict of interest cannot be mitigated, avoided, or neutralized.

11. COMMUNICATIONS/NEGOTIATIONS WITH APPLICANTS

a. Pre-proposal/application communications and assistance:

(1) Program Offices may, but are not required to, provide the opportunity for pre-proposal/application assistance to potential applicants interested in competing for an assistance agreement. Pre-proposal/application assistance may include helping potential applicants determine whether the applicant itself or the applicant's proposed project is eligible for funding, assisting potential applicants with administrative issues relating to the submission of a proposal/application, and responding to requests for clarification of the announcement. Clarifications that result in changes to the announcement must be communicated (through a modification to the announcement) to potential applicants in the same manner as the original announcement was publicized.

(2) If provided, the opportunity for pre-proposal/application assistance must be made available on an equal basis to all potential applicants. Potential applicants must be informed of the availability of such assistance in the announcement, and Program Offices must describe how the assistance will be provided. In

informing potential applicants of the availability of pre-proposal/application assistance, Program Offices must ensure that the potential applicants understand that they are responsible for the content of their proposals/applications and that receiving information and assistance from EPA does not guarantee funding. Program Offices must also ensure that potential applicants from remote areas have an opportunity to obtain pre-proposal/application assistance without having to travel to Headquarters or a regional or satellite EPA facility. If Program Offices cannot provide all potential applicants with a reasonable opportunity to obtain such assistance, then providing such assistance to any potential applicant is not appropriate.

(3) Agency employees may not provide pre-proposal/application assistance that will give particular potential applicants a competitive advantage.

b. Communications with applicants after submission of proposals/applications:

If necessary, after submission of proposals/applications but before selection decisions are made, EPA personnel may have limited communications with applicants for the purpose of clarifying certain aspects of the proposal/application relating to threshold eligibility factors, for partial funding purposes if permitted by the terms of the announcement, or to resolve minor or clerical errors. Such communications shall not be used to cure proposal/application deficiencies or material omissions, materially alter the proposal/application or project proposed, or discuss changes to the applicants responses to any evaluation or selection criteria.

c. Post-selection communications with applicants:

(1) Following selection of an applicant for award, but before the award has been made, Program Offices may have negotiations or communications with the applicant to clear up issues with carrying out the project's scope of work or that serve to strengthen the selected application/proposal, to resolve administrative issues, or if permitted by the terms of the announcement for partial funding purposes. Generally, these types of negotiations or communications will be acceptable if they do not affect the basis upon which the proposal/application (or portion thereof) was evaluated and selected for award.

(2) Post-selection negotiations or communications with an applicant that seek to materially change the proposal/application (or portion thereof) that was submitted, evaluated, and selected for award, or that allow the applicant to materially revise its proposal/application (or portion thereof) that was selected for award, are prohibited.

d. During any discussions or communications with potential applicants or

applicants under paragraphs a, b, and c above, Agency employees shall not provide advice or information that will give particular potential applicants or applicants a competitive advantage. Agency employees must not prepare proposals/applications for applicants, share ideas with potential applicants or applicants that are contained in a competing proposal/application, review and comment on draft proposals/applications, assist potential applicants in responding to evaluation and selection factors, or provide information to a potential applicant or applicant on the Agency's approach to evaluating proposals/applications or selecting applicants for award that is not otherwise stated in the announcement.

12. EXCEPTIONS FROM COMPETITION

- a. EPA's policy is to promote and provide for competition in awarding assistance agreements to the maximum extent practicable. However, Program Offices may award assistance agreements that are subject to this Order non-competitively under the following limited circumstances:

(1) When the assistance agreement is for \$15,000 or less subject to the following conditions:

(A) Agreements, projects, or activities that exceed \$15,000 in value shall not be divided into smaller agreements, projects, or activities that do not exceed \$15,000 to permit use of this exception. Furthermore, this exception shall not be used to make multiple non-competitive awards of \$15,000 or less to a recipient or recipients for the same or similar project, activity, and purpose within any calendar year (e.g., if \$90,000 is available for the same or similar project, activity, and purpose then this must be competed; making six \$15,000 non-competitive awards to the same or different recipients for the same or similar project, activity, and purpose would be improper). Any question as to the propriety of non-competitively awarding an assistance agreement under this paragraph must be referred to the GCA for resolution.

(B) If a Program Office awards an assistance agreement non-competitively under this paragraph it must indicate this in the funding recommendation or award decision memorandum.

(2) One responsible source:

When the Program Office demonstrates that there is only one responsible source that has the capability to successfully perform the project based upon: (1) research indicating that they are the only source that can

successfully perform the project; (2) unique or specialized equipment or facilities that they possess that are necessary for successful performance of the project; (3) proprietary data, software data rights, or license agreements; or (4) specific technical expertise, or other unique qualifications, that other sources do not possess. Demonstrating that a source is the “best” qualified or capable source to perform the project, the most “appropriate” source to perform the project, or has successfully performed similar projects in the past, does not support a one responsible source determination.

(3) Urgency or National Security:

When the assistance agreement cannot be delayed due to unusual and compelling urgency or the interests of national security. For example, this determination may be justified on the basis that time constraints associated with a public health/safety/welfare or national security issue preclude competition.

(4) Co-regulators and Co-implementors:

When the award is to a national or regional organization that represents the interests of co-regulators or co-implementors (State, Tribal or Local governments) in the execution of national or regional environmental programs. An organization comprised of educational institutions would not be a co-regulator or co-implementor organization. In addition, an organization representing states would not be a co-regulator or co-implementor of tribal environmental programs. The justification for awards made under this exception must demonstrate that:

(A) The membership of such national or regional organization is predominantly composed of officials of the co-regulator or co-implementor entities (e.g., State or Tribal program directors or commissioners); and

(B) The co-regulator/co-implementor organization represents governmental interests (e.g., the interests of State, Tribal or Local government units) in the execution of national or regional environmental programs and helps these governmental units carry out national or regional environmental programs that have been delegated to them, or that the governmental units carry out in participation with EPA in a national or regional effort (e.g., the agreement would allow the co-regulator organization to assist its state membership develop and implement environmental protection programs at non-federal levels of government); and

(C) The nature of the work that the co-regulator/co-implementor

organization will carry out under the assistance agreement furthers the specific interests of its governmental members in developing or implementing national or regional environmental protection programs that the governmental members will carry out in their governmental capacity at the State, Tribal, or Local levels.

(5) Unsolicited proposals:

When the award is to fund an unsolicited proposal that: (i) is unique or innovative, (ii) has been independently originated and developed by the applicant, (iii) was prepared without Government supervision, endorsement, direction or direct Government involvement, and (iv) does not resemble the substance of a pending or contemplated competitive announcement. No EPA employee may take action to directly or indirectly encourage the submission of unsolicited proposals. Before beginning a comprehensive evaluation of the proposal, the Program Office should consult with the GMO and the GCA to discuss whether the proposal appears to meet the requirements for consideration of an unsolicited proposal.

(6) Public interest:

When the Lead Agency Official, with the concurrence of the GCA, determines in writing that competition is not in the public interest. This determination may not be redelegated.

- b. Awarding assistance agreements on a non-competitive basis shall not be justified on the basis of lack of advance planning by the Program Office or concerns related to the availability of funds (e.g., funds will expire).
- c. If a Program Office determines that the circumstances justify the award of an assistance agreement non-competitively based on the criteria in paragraphs a.(2)-(6) above, it must provide a written justification in, or attached to, the award decision memorandum or funding recommendation, demonstrating why competition is not required. The justification must be approved by the appropriate officials specified in paragraph d. below before the award is made. The justification must contain sufficient facts and rationale to justify the non-competitive award and at a minimum must include the following information:
 - (1) Identification of the Program Office and identification of the document as a "Justification For A Non-Competitive Award".
 - (2) Nature and/or description of the action being approved.
 - (3) Identification of the authority under this Order permitting the non-competitive award.

- (4) An explanation of the circumstances justifying why the award is to be made on a non-competitive basis and why competition is not required.
- (5) Any other facts or circumstances supporting the determination to make a non-competitive award (e.g., why competition is not practicable).

d. Approval and Review Requirements:

- (1) Program Offices shall coordinate with the GMOs as soon as the circumstances that may justify a non-competitive award based on Sections 12.a(2)-(6) materialize, particularly for those relating to co-regulator or co-implementor awards under paragraph a.(4) above. In addition, Program Offices and GMOs should raise any questions relating to the propriety of making a non-competitive award under Section 12.a to the GCA. Disagreements between a Program Office and GMO relating to making a non-competitive award must be brought to the attention of the GCA who will attempt to resolve the differences. If they cannot be resolved, the GCA will make the final determination on whether a non-competitive award is justified.
- (2) Justifications for non-competitive awards based on Sections 12.a(2), (3), or (5) shall be approved in writing, prior to award, by the Lead Agency Official or his/her designee. Justifications for non-competitive awards based on Sections 12.a(4) or (6) shall be approved in writing, prior to award, by the Lead Agency Official and this cannot be redelegated.
- (3) In addition, all justifications for non-competitive awards based on Sections 12.a(5) or (6), and all justifications for non-competitive awards exceeding \$250,000 (e.g., where the total project period costs exceed \$250,000) based on Sections 12.a(2), (3), or (4), must be approved in writing, prior to award, by the GCA.

13. AMENDMENTS

- a. Program Offices may not use amendments to avoid compliance with this Order.
- b. For purposes of this Order, amendments include:
 - (1) Supplemental funding amendments for additional work: These include amendments seeking additional funding over and above what was approved in the assistance agreement for a given budget period to perform additional work that is within the scope of the original agreement.
 - (2) Supplemental funding amendments for cost increases: These include amendments to add funds to an agreement for unanticipated and unforeseen increased costs (as opposed to adding funds for additional work), such as those

associated with salary and fringe benefit increases and indirect cost rate adjustments, that are within the scope of work of the original agreement but were not included in the total budget period costs in the assistance agreement application or agreement.

(3) No-cost amendments: These include amendments that do not add additional funding to an agreement but may be for time extensions to perform the scope of work and/or to authorize spending unexpended funds on additional activities that are within the scope of work of the agreement. These types of no-cost amendments do not have to be competed.

(4) Incremental funding amendments: An incremental funding amendment adds funds to an award when the original application request has not been fully funded as of that amendment. Program Offices may award incremental funding amendments to partially-funded assistance agreements without competition provided the original assistance agreement was awarded competitively or qualified for one or more of the competition exceptions under section 12 a.(2)-(6) of this Order. The amendment must be within the scope of work of the project as described in the original award.

c. Competition of amendments:

Whether an amendment must be competed depends upon any applicable statutory/regulatory provisions, the type and nature of the amendment and its amount, and whether it is within the scope of work of the original agreement.

(1) Amendments under exempt awards: Amendments to awards made non-competitively under the programs that are exempt from the competition requirements of this Order by Section 6 c.(1)-(6) are not subject to the amendment competition requirements in this Section of the Order and do not have to be competed. However, if an award that is exempt under Section 6.c is competed then amendments to that award are subject to the requirements in this Section of the Order.

(2) Amendments to competitive awards and non-competitive Section 12.a awards:

(A) Supplemental funding amendments for cost increases:

These amendments may be awarded without competition if they do not involve additional work and are necessary solely to meet increased costs that are within the scope of the original agreement but that were unforeseen and unanticipated at the time the application was submitted or when the award was made (e.g., when actual costs are unexpectedly higher than the

estimated total budget period costs but involve no additional work). If the amendment seeks a funding increase for other reasons or involves additional work, then competition may be required under paragraph (B) below.

(B) Supplemental funding amendments for additional work:

Supplemental funding amendments for additional work not exceeding a cumulative total of \$15,000 may be issued non-competitively if the additional work is within the scope of work of the agreement. All other proposed supplemental funding amendments for additional work (e.g., those above the cumulative \$15,000 total) must be competed under the provisions of this Order unless:

- (1) The proposed additional work and activities to be covered by the amendment are within the scope of work of the original agreement, and
- (2) The Program Office demonstrates that the additional work is integrally related to, and necessary for, the satisfactory completion of the original scope of work so that only the recipient has the capability to perform the additional work in a cost effective manner.

(C) Additional activities or work proposed to be included in supplemental funding amendments that are not within the scope of work of the original agreement are subject to, and must be competed in compliance with, the requirements of this Order.

- d. To determine whether an amendment seeking the performance of additional work is within the scope of work of the original agreement requires a comparison of the original work to the proposed additional work. For example, an amendment will be outside of the scope of work of the original agreement when it:

- (1) Requires or causes significant or important changes to the type of work set forth in the assistance agreement, or seeks to add unrelated work to the agreement.
- (2) Significantly increases the amount of the agreement relative to the original amount of the agreement—this factor does not apply to incremental funding amendments as described above.
- (3) Materially changes the function, purpose, or nature of the project.

- e. Program Offices must document compliance with the requirements of this Section

in the amendment packages and GMO's must review the documentation prior to approving the amendment packages.

14. COMPETITION PLANNING

- a. EPA's funding opportunities for assistance agreements, and eligible applicants for that funding, are identified for the public in the Catalog of Federal Domestic Assistance. Each year, as part of the process of identifying annual funding priorities for the agency, Program Offices work with the GAD to update and revise existing CFDA descriptions and provide descriptions for new programs. CFDA descriptions include a list of eligible applicants, an explanation of the activities that may be funded, a list of annual funding priorities, an estimate of fiscal year funding availability, an average range of funding for each award, an estimated number of awards to be made for each fiscal year, and other pertinent information.
- b. For purposes of this Order, except for simplified competitions conducted in accordance with Section 7, the eligible applicants identified under a CFDA program description are those that can compete for awards under announcements using that CFDA program description. If there are legitimate reasons to justify regularly limiting eligibility to compete for awards under certain competitive funding opportunities (e.g., to a subset of eligible applicants, to only sources from within a specific geographic or regional area, or to those applicants that meet certain programmatic criteria) to less than the universe of applicants potentially eligible for the opportunity under the applicable CFDA program description, then the Program Office must request and obtain the concurrence of the GCA to revise or update the CFDA program description accordingly or develop a new CFDA program description for the funding opportunity reflecting the limitation. The request must explain the rationale for the limitation and demonstrate that it will not have an adverse impact on competition (e.g, by showing that it is not practical, feasible, or meaningful to open the competition for the funding opportunities to all potentially eligible applicants identified under the applicable CFDA program description). In evaluating the request, the GCA will assess the competitive impact of the limitation and any other relevant factors supporting the request. If the GCA approves the request, the Program Office must work with the Grants Administration Division to update and revise the CFDA program description, or develop a new CFDA program description, to accurately designate the entities eligible to compete for funding opportunities under the CFDA program description so that the public is aware that eligibility is limited to those group(s).
- c. In addition to the CFDA program descriptions, Program Offices may develop a competition plan or forecast which describes in more detail the office's competitive assistance agreement programs, the potentially eligible applicants (consistent with the applicable CFDA entry), the estimated amount of funding to

be available for the competitive funding opportunities (e.g., the estimate could be based on historical experience if actual current information is not available), and the anticipated competition schedule. The plan, which would be made publicly available on the Program Office's website, would provide the public with more specific competition-related information than the CFDA program description.

15. DOCUMENTATION RETENTION REQUIREMENTS

- a. Program Offices must maintain assistance agreement competition-related documentation and records consistent with this Order, any statutory/regulatory requirements, and applicable record retention schedules, including EPA Records Schedule 003 (Grants And Other Program Support Agreements) and 274 (Unsuccessful Grant Application Files). Assistance agreement competition-related documentation and records include but are not limited to announcements, correspondence, the identity of reviewers, evaluation score sheets and other evaluation documentation (e.g., individual and consensus score sheets), ranked/recommended/qualified lists of applicants or proposals/applications, selection and award documentation, justifications and documentation pertaining to non-competitive awards, funding recommendations and decisions, conflict of interest and disputes documentation, and any other assistance agreement competition-related documentation and records as described in the applicable records retention schedules. The record schedules specify the time periods that documents must be retained and may impose different time periods for different documents.
- b. GMOs must also maintain assistance agreement competition-related documentation and records consistent with this Order, any statutory/regulatory requirements, and applicable record retention schedules, including EPA Records Schedule 003 (Grants and other Program Support Agreements) and 274 (Unsuccessful Grant Application Files).
- c. EPA record schedules are located at <http://www.epa.gov/records>.

16. NOTIFICATION TO UNSUCCESSFUL APPLICANTS AND DISPUTES

- a. Unless the statute or regulation authorizing the assistance agreement specifically provides for an administrative disputes or appeals process, Program Offices must follow the disputes resolution procedures set forth in Appendix A to this Order, or dispute resolution procedures that are "substantially the same" to the Appendix A procedures, for the resolution of competition-related assistance agreement disputes and disagreements (including those relating to the solicitation, evaluation, or selection process for award).
- b. A Program Office may use dispute resolution procedures that are "substantially

the same” to the Appendix A procedures when they are authorized by the GCA to use a variation of the Appendix A procedures to accommodate requirements or concerns unique or peculiar to a program. A Program Office must obtain the approval of the GCA before using any “substantially the same” dispute resolution procedures (See also Section 17). These procedures must be consistent with the principles and purposes of this Order and the Appendix A procedures and contain the following features:

- (1) Require that, to the extent practicable, disputes and disagreements be resolved at the lowest level possible and that if they cannot be resolved at that level that a Grants Competition Dispute Decision Official (GCDDO) as described in Section 5 of this Order be designated to resolve the dispute.
- (2) Provide applicants with an effective and meaningful dispute resolution process. This means that the dispute resolution process affords applicants the opportunity for an effective and meaningful remedy if they successfully challenge the Agency’s position on the disputed issue (e.g., if they successfully challenge a determination that they are ineligible to compete for failure to meet the threshold eligibility factors in the announcement they can be included back in the competition in time to compete for an award).
- (3) Provide applicants with timely notification of (I) any ineligibility determinations (e.g., notification that they were deemed ineligible by EPA for award consideration because they were not considered an eligible applicant or otherwise did not meet the threshold eligibility factors in the announcement) or (ii) decisions that they were not selected for award (e.g., notification to the applicant that they were not selected for award based on their ranking or scoring after an evaluation of their application/proposal against the evaluation and selection factors in Section V of the announcement).
- (4) Provide applicants with an opportunity for a timely debriefing to obtain a fuller explanation of why they were deemed ineligible for award consideration or not selected for award.
- (5) Provide that applicants may only file disputes on questions relating to threshold eligibility issues, not scoring or ranking issues (See paragraph “e” of Appendix A).
- (6) Provide for a “good cause” exception similar to paragraph e(3) of Appendix A.
- (7) Provide that the GCDDO, after consultation with the Program Office, GCA, and OGC/ORC, determine whether to delay the award process

pending resolution of the dispute, particularly those involving threshold eligibility issues.

(8) Provide that the GCDDO will establish a schedule and process for resolving and administering the dispute, and issue a timely written decision subject to GCA and OGC/ORC review.

(9) Provide that the GCDDO's decision will constitute final agency action and is not subject to further review within the Agency.

- c. The GCA will review the effectiveness of the dispute resolution procedures described in Appendix A, and any "substantially the same" procedures that have been approved, during calendar year 2005, and after consultation with GMOs, Program Offices, and OGC/ORC, make any changes necessary to improve their effectiveness in providing for a fair, efficient, effective, and meaningful dispute resolution process.
- d. The dispute provisions of 40 CFR 30.63 and Part 31, subpart F, do not apply to assistance agreement competition-related disputes and disagreements.

17. PROGRAM OFFICE PROCEDURES

Headquarters Program Offices, in consultation with the GAD, and regional Program Offices, in consultation with the appropriate Regional Grants Management Office, may develop program or region-specific procedures to implement this Order. These procedures must be consistent with the principles and purposes of this Order, be in writing, and be approved by the GCA before they can be used. Program or region specific procedures may address innovative competitive techniques that enhance or facilitate competition or better fit the needs and objectives of a particular program, dispute resolution procedures that are "substantially the same" as the procedures contained in Appendix A (See Section 16), OGC/ORC and GCA review requirements, or other competition-related procedures

18. GRANTS COMPETITION ADVOCATE

Located in the Office of Grants and Debarment, the GCA is responsible for interpreting, and administering implementation of, this Order. The GCA will:

- a. Monitor compliance with, and the effectiveness of, this Order.
- b. Develop and issue guidance, as necessary, for implementation of this Order.
- c. Interpret the provisions of this Order.
- d. Carry out the specific responsibilities identified in this Order, including but not

limited to those under Sections 8.c, 8.f, 8.h, 8.i, 10.b, 12.a (6), 12.d(1), 12.d (3), 14.b, 16.b, 16.c, 17, 20, and Appendix A.

- e. Coordinate the development and presentation of training, as necessary, to assure effective implementation of this Order.
- f. Evaluate the effectiveness of this Order in providing for effective assistance agreement competitions based on relevant competition performance measures, information, and reports.
- g. Make recommendations and take actions necessary to maintain, facilitate, promote, and enhance the effectiveness of this Order.

19. RESPONSIBILITIES

- a. Program Offices are responsible for complying with the requirements of this Order and any implementing guidance issued by the GCA including:
 - (1) Ensuring that the funding recommendation or Award Decision Memorandum, or an attachment thereto, contains the selection justification documentation required by Section 9.f of this Order.
 - (2) Documenting in the file that the individuals involved in the competition, evaluation, and selection processes do not have any un-resolved conflicts of interest (See Sections 9 and 10).
 - (3) Ensuring that the funding recommendation, Award Decision Memorandum, or file as appropriate includes the documentation and determinations required by this Order.
 - (4) Using the exemptions and exceptions from competition authorized by Sections 6 and 12 only under appropriate circumstances and preparing adequate and defensible justifications for non-competitive awards.
 - (5) Submitting to the GCA for review and approval justifications for non-competitive awards as specified in Section 12.d(3).
 - (6) Submitting to the GCA and OGC/ORC for review announcements as specified in Section 8.i.
 - (7) Providing the GCA, if requested, with information pertaining to the competitions conducted by the Program Office.
 - (8) Raising any questions or issues regarding compliance with the competition

requirements of this Order to the GCA.

- b. The “Grants Competition Disputes Decision Official” is responsible for resolving and administering assistance agreement competition-related disputes that are submitted by unsuccessful applicants pursuant to Appendix A of this Order or any “substantially the same” dispute resolution procedures approved by the GCA.
- c. The Grants Competition Advocate is responsible for performing the activities listed in Section 18 of this Order. In addition, if a GMO and a Program Office disagree concerning compliance with, or the interpretation of, this Order or any implementing guidance, the matter will be resolved by the GCA.
- d. Grants Management Offices must comply with the requirements of this Order and any implementing guidance issued by the GCA and review funding packages to ensure that the Award Decision Memorandum and funding recommendation requirements of this Order are satisfied. In addition, GMO’s are responsible for:
 - (1) Ensuring, before a competitive award is made, that the information provided by the Program Office in or attached to the funding recommendation or Award Decision Memoranda adequately explains and justifies the reasonableness of the award decision (See Section 19.a (1)). If it does not, the GMO may request additional documentation from the Program Office necessary to support the reasonableness of the award decision. GMO’s shall not sign the award document, or forward it for award official signature, if the documentation provided by the Program Office does not demonstrate the reasonableness of the award decision.
 - (2) Reviewing justifications for non-competitive awards authorized by Section 12 for purposes of assessing whether they reasonably support the decision to make the award on a non-competitive basis. If they do not, the GMO shall not sign the award document, or forward it for award official signature.
 - (3) Raising any questions or issues regarding compliance with the competition requirements of this Order to the GCA.
- e. The Assistance Law Practice Group in the Office of General Counsel (OGC) and attorneys in the Office of Regional Counsel (ORC) are responsible for providing legal advice and support to Program Offices, GMOs, and the GCA on grants competition-related matters, reviewing announcements as specified in Section 8.i of this Order, and providing advice and support to the GCDDO in resolving assistance agreement competition-related disputes. They are also responsible for resolving legal questions regarding compliance with the Federal Grant and Cooperative Agreement Act, the statutory authority for the award of an assistance agreement, and the interpretation of applicable regulations.

- f. Lead Agency Officials must carry out the responsibilities identified for them under this Order including but not limited to those specified under sections 6.c(6), 12.a(6), and 12.d(2).

20. WAIVERS

The GCA, after consultation with the Director, OGD, may issue waivers from the requirements of this Order where compliance would be impracticable or not in the best interests of the Government, or in exigent circumstances.

21. SUPERSESION AND REVIEW

This Order supersedes EPA Order 5700.5, “Policy for Competition in Assistance Agreements (September 12, 2002 approval date)”. The GCA will review this Order within three years of its effective date and make any changes necessary to ensure its continued effectiveness and consistency with any Government-wide assistance agreement competition requirements.

Appendix A-Dispute Resolution Procedures

- a. Whenever practicable, disputes and disagreements relating to assistance agreement competition-related decisions and actions must be resolved at the lowest level possible.
- b. The procedures and time frames specified below are designed to provide for an efficient, effective, and meaningful dispute resolution process. EPA Program Offices may use “substantially the same” dispute procedures as those specified herein if they are approved by the EPA Grants Competition Advocate (GCA) and provide applicants with a meaningful dispute resolution process. A meaningful dispute resolution process is one that affords unsuccessful applicants the opportunity for an effective remedy if they succeed on their dispute.
- c. Notification:
 - (1) The Program Office conducting the competition must provide applicants with timely written or e-mail notification that they were (i) determined to be ineligible for award consideration as a result of the threshold eligibility review of their application/proposal (e.g., the application/proposal failed to meet the threshold eligibility criteria in the announcement), or (ii) not selected for award based on their ranking/scoring after an evaluation of their application/proposal against the ranking and selection factors in Section V of the announcement.
 - (2) Notification of ineligibility must be provided by the Program Office to the applicant within fifteen calendar days of the decision finding that the applicant was not eligible for award consideration because of a failure to meet the threshold eligibility criteria in the announcement; notification to applicants that they were not selected for award based on the ranking/scoring of their proposal/application must be provided by the Program Office to the applicant within fifteen calendar days of the final selections for award.
 - (3) The notification letter or e-mail must indicate, as appropriate, that the applicant and/or its application/proposal was not eligible for award consideration based on the threshold eligibility review,

or not selected for award based on the ranking/scoring of its application/proposal, and generally explain the reasons why. It must also advise the applicant that it may request a fuller debriefing (and notify the applicant that it must make its debriefing request within fifteen calendar days of receiving the notification letter or e-mail) of the basis for the ineligibility determination or selection decision. Debriefings, however, are not required when an applicant's proposal/application is rejected solely because it failed to meet a submission deadline date specified in Section IV of the announcement (e.g., it was received, postmarked, etc., after the deadline established in the announcement making it a late proposal/application).

d. Debriefings:

(1) Debriefings may be done orally (e.g., face to face, telephonically) or in writing at the discretion of the Program Office, although oral debriefings are strongly preferred because they provide a better opportunity to resolve questions and issues in an expedited manner. For oral debriefings, the Program Office will conduct the debriefing of the unsuccessful applicant at a mutually agreeable time and place as soon as practicable after receiving the debriefing request; for written debriefings, the Program Office will provide the unsuccessful applicant with a written debriefing as soon as practicable after receiving the debriefing request. All debriefings, but particularly those for applicants that were deemed ineligible for award consideration for failure to meet the threshold eligibility factors in the announcement, must be conducted in a timely manner so that the applicant has the opportunity to obtain a meaningful remedy if they successfully challenge the ineligibility determination.

(2) Upon receiving a debriefing request from an unsuccessful applicant, the Program Office must promptly notify the Director, Office of Grants and Debarment, or regional award official, as appropriate, so that a Grants Competition Dispute Decision Official (GCDDO) can be designated.

(3) The oral or written debriefing will be limited to explaining why the applicant was found ineligible for award consideration or why it was not selected for award and must not disclose any information protected from disclosure by applicable law or regulation (e.g., the Freedom of Information Act, Privacy Act), including trade secrets, privileged or confidential commercial,

financial or other information exempt from disclosure under the Freedom of Information Act, or the identity of review panel members or other reviewers. The Program Office should consult with Office of General Counsel/Office of Regional Counsel (OGC/ORC) attorneys before any oral debriefing and allow them to review any written debriefing response before it is sent. Further, any questions relating to what type of information may be disclosed at a debriefing must be directed to OGC/ORC attorneys or the Grants Competition Advocate.

(4) The debriefing explanation will, as appropriate:

(A) Identify the threshold eligibility criteria that the applicant failed to meet and specify the basis for the Agency's determination that the proposal/application or applicant was not eligible for award consideration because of failure to meet the threshold eligibility criteria.

(B) Provide the applicant with the numerical (e.g. points) or other basis for scoring/ranking its proposal/application under the evaluation criteria used in the competition.

(C) Provide the applicant with information on the strengths and weaknesses of its proposal/application in terms of the specific evaluation criteria used in the competition.

(D) Provide responses to relevant questions regarding whether the evaluation and selection procedures contained in the announcement were followed and why the applicant was not selected for award. However, the debriefing must not include point by point comparisons of the applicant's proposal/application to other proposals/applications.

(E) Identify the GCDDO.

e. Filing of a Dispute:

(1) After receiving a debriefing, an unsuccessful applicant or their representative may file a written dispute with the appropriate GCDDO. When there was an oral debriefing, the written dispute must be received by the GCDDO within fifteen calendar days of the debriefing date; when there was a written debriefing, the written dispute must be received by the GCDDO within fifteen calendar days of when the applicant received the written debriefing letter. The written dispute must include a detailed statement of the

legal and/or factual basis for the dispute, the remedy that the applicant is seeking, information on how to communicate with the applicant or its representative (e.g., phone and fax numbers, e-mail address), and any documentation relevant to the dispute. Disputes may only be filed with the GCDDO after a debriefing; disputes filed before, or in the absence of, a debriefing will be dismissed. Furthermore, the GCDDO is only required to consider disputes on the following grounds:

(A) Where an applicant challenges the EPA determination that it and/or its proposed project is ineligible for funding based on the applicable statute, regulation, or announcement requirements; or

(B) Where the applicant challenges the decision that it is not eligible for award consideration because EPA determined that its proposal/application did not meet the threshold eligibility requirements contained in the announcement.

(2) Unsuccessful applicants whose proposal/application was rejected solely because it was received late, or who were not selected for award based on the ranking/scoring of its proposal/application after a full evaluation by EPA based on the ranking and selection criteria in Section V of the announcement (e.g., challenges to the Agency's technical evaluation or ranking/scoring of the applicant based on the ranking and selection factors in Section V of the announcement), are not entitled to file disputes with the GCDDO. Such disputes will be dismissed by the GCDDO except as may be provided for in paragraph (3) below. In addition, the GCDDO may dismiss any dispute that is clearly untimely filed, raises issues that the GCDDO will not consider, or that fails to set forth a detailed statement of the legal and/or factual basis for the dispute.

(3) The GCDDO, for good cause shown and where there are compelling reasons, or where he/she determines that a dispute raises significant issues of widespread interest to the assistance agreement community, may consider an untimely filed dispute or any other dispute filed by an unsuccessful applicant. The GCDDO will invoke this discretion sparingly.

- f. If a dispute is filed, the GCDDO must consult with the Program Office, OGC/ORC, and the GCA, and then determine whether it is in the Agency's best interest to delay the award process pending resolution of the dispute, particularly for disputes involving threshold eligibility issues.

- g. Unsuccessful applicants must be provided with reasonable access to Agency records relevant to the dispute in a manner consistent with the standards contained in the Freedom of Information Act. EPA will not disclose materials exempt from disclosure under the Freedom of Information Act.
- h. Upon receiving a dispute, the GCDDO will establish a process and schedule for resolving the dispute and communicate this to the applicant and affected Program Office. At his or her discretion, the GCDDO may (i) request additional information from the applicant or Program Office and/or (ii) meet by phone or in person with the unsuccessful applicant and/or Program Office.
- i. After reviewing all of the information relevant to the dispute, the GCDDO, after consultation with the GCA, and with the concurrence of the OGC/ORC, will timely issue a final written decision regarding the dispute. The GCDDO's decision will constitute final agency action and is not subject to further review within the Agency.